# Muhamad bin Hashim v Teow Teik Chai & Anor

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12–159–1994
JEFFREY TAN JC
13 NOVEMBER 1995

***Civil Law Act*** *— Damages — Fatal accident — Dependency claim — Whether claimant must depend on financial support lost — Quantification of loss of support — Whether amount of support must be for the direct benefit of claimant — Whether multiplier in s 7(3)(iv)(d) of the Civil Law Act 1956 is fixed — Civil Law Act 1956 s 7(3)*

***Damages (Personal Injury or Death)*** *— Fatal accident — Dependency claim — Whether claimant must depend on financial support lost — Whether amount of support must be for the direct benefit of claimant — Whether court can consider contingencies in choosing multiplier — Civil Law Act 1956 s 7(3)*

This was an appeal by the appellant against the decision of the Butterworth Sessions Court in an action brought by the appellant following the death of his son ('the deceased') in a motor accident. The appellant's claim was a dependency claim under s 7(3) of the Civil Law Act 1956 ('the Act'). The trial judge found the respondents 100% liable for the accident but dismissed the dependency claim, holding that the loss of money given by the deceased to the appellant was not within the loss which could be claimed under s 7 of the Act. The trial judge relied on the evidence of the appellant that the RM700 given monthly by the deceased to him was for family expenses. The appellant admitted that he had a monthly income of RM500 of his own, that he did not rely on the deceased's income and that he was making the dependency claim for his family and children. The appellant, however, stated that the RM700 was important to him because without it, he would not have been able to meet his family responsibilities. The question for the court to decide in this appeal was whether, to succeed in his claim, it was necessary that the financial support lost was depended on by the appellant for his everyday subsistence so as to fall within the ambit of 'loss of support' in s 7(3) of the Act.

**Held**, allowing the appeal:

(1) To succeed in his claim for loss of support, the appellant had to prove the financial loss sustained by him as a dependant under s 7(2) of the Act (see p 13F–G; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 followed).

(2) The appellant must be the direct beneficiary of the financial support and the test is the direct, and not vicarious, benefit to the appellant. However, the appellant need not prove that he was dependent on the financial support. The proof of indigent circumstances, and therefore a greater likelihood of dependence

on the deceased, will nevertheless give much truth to a claim for the support that was lost (see p14C–E; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 followed).

(3) Therefore, the finding by the trial judge that the 'loss of support' was not proved because the appellant was not dependent on the deceased could not be supported. The RM700 given by the deceased to the appellant was for family expenses and the appellant as a member of that family must have derived some direct benefit. Considering that the deceased was 21 years old and single, and was drawing a salary of at least RM565 per month, the trial court's provisional assessment of RM250 per month on a multiplier of eight years as the loss of support suffered by the appellant was reasonable (see pp 14I–15A).

**Per curiam:**

The multiplier of 16 years in s 7(3)(iv)(d) of the Act is neither strict nor rigid. The court can take into account contingencies such as the future marriage of an unmarried child (see p 11H; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 followed; *Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99 distinguished).

**[Bahasa Malaysia summary**

Ini adalah rayuan oleh perayu melawan keputusan Mahkamah Sesyen Butterworth dalam tindakan yang dibawa oleh perayu berikutan daripada kematian anak lelakinya ('si mati itu') dalam kemalangan motor. Tuntutan perayu adalah tuntutan tanggungan di bawah s 7(3) Akta Undang-Undang Sivil 1956 ('Akta itu'). Hakim perbicaraan mendapati penentang 100% bertanggungjawab untuk kemalangan itu tetapi menolak tuntutan tanggungan itu, memutuskan bahawa kehilangan wang yang diberi oleh si mati kepada perayu bukanlah kehilangan yang boleh dituntut di bawah s 7 Akta itu. Hakim perbicaraan bergantung kepada keterangan perayu bahawa RM700 yang diberikan setiap bulan oleh si mati kepada perayu adalah untuk perbelanjaan keluarga. Perayu mengaku bahawa beliau sendiri mendapat pendapatan bulanan sebanyak RM500, bahawa beliau tidak bergantung pada pendapatan si mati dan bahawa beliau membuat tuntutan tanggungan itu untuk keluarganya dan anak-anaknya. Perayu, bagaimanapun, menyatakan bahawa RM700 itu penting kepadanya kerana tanpa wang itu, dia tidak dapat menepati tanggungjawabnya kepada keluarga. Persoalan untuk ditentukan oleh mahkamah dalam rayuan ini ialah sama ada, untuk berjaya dalam tuntutannya, adalah perlu untuk perayu bergantung kepada kehilangan saraan kewangan itu untuk saraan hariannya supaya termasuk di bawah lingkungan 'kehilangan saraan' di bawah s 7(3) Akta itu.

**Diputuskan,** membenarkan rayuan itu:

(1) Untuk berjaya dalam tuntutan kehilangan saraan itu, perayu mesti membuktikan bahawa kehilangan kewangan itu adalah dialami olehnya sebagai seorang tanggungan di bawah s 7(2) Akta itu (lihat ms 13F–G; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 diikut).

(2) Perayu mestilah merupakan benefisiari langsung saraan kewangan itu dan ujiannya adalah manfaat terus, dan bukan secara vikarius, kepada perayu. Walau bagaimanapun, perayu tidak perlu membuktikan bahawa dia bergantung kepada saraan kewangan itu. Bukti keadaan yang memerlukan, dan oleh itu kemungkinan lebih besar bahawa perayu bergantung kepada si mati, namun demikian akan membawa kepada kepercayaan yang lebih berkenaan tuntutan untuk saraan yang hilang (lihat ms 14C–E; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 diikut).

(3) Maka, keputusan yang dibuat oleh hakim perbicaraan bahawa 'kehilangan saraan' tidak dibuktikan kerana perayu tidak bergantung kepada si mati, tidak boleh disokong. RM700 yang diberikan oleh si mati kepada perayu adalah untuk perbelanjaan keluarga dan perayu sebagai seorang ahli keluarga itu tentunya telah mendapat sedikit manfaat langsung. Memandangkan bahawa si mati berumur 21 tahun dan bujang, dan mendapat gaji tidak kurang daripada RM565 sebulan, taksiran sementara oleh mahkamah perbicaraan sebanyak RM250 sebulan di atas pengganda lapan tahun untuk kehilangan saraan yang dialami oleh perayu adalah munasabah (lihat ms 14I–15A).

**Per curiam**:

Pengganda 16 tahun dalam s 7(3)(iv)(d) Akta itu bukan tegas ataupun tegar. Mahkamah boleh mengambil kira kontingensi seperti kemungkinan perkahwinan seorang anak yang bujang di masa hadapan (lihat ms 11H; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 diikut; *Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99 dibeza).]

[*Editorial note*: The respondent has appealed to the Court of Appeal vide Civil Appeal No P–04–95–95.]

**Notes**

For cases on damages awarded in fatal accidents under the Civil Law Act 1956, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 2219–2246.

For cases on dependency claims in fatal accidents, see 6 *Mallal's Digest* (4th Ed) paras 267–268; [1992] Mallal's Digest 852–853; [1993] Mallal's Digest 707–708; [1994] Mallal's Digest 1195–1196.

**Cases referred to**

*Burgess v Florence Nightingale Hospital for Gentlewomen* [1955] 1 QB 349; [1955] 1 All ER 511; [1955] 2 WLR 533
*Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233
*Davies v Powell Duffryn Associated Collieries Ltd (No 2)* [1942] AC 601
*Low Kim Yan v Tay Guat Hian & Ors* [1960] MLJ 261
*Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99
*Mariayee & Anor v Mohamed Nasir & Anor* [1985] 1 MLJ 427
*Nam Thiam Siew v Chuang Wai Lan* [1959] MLJ 126
*Sykes v North-Eastern Railway* (1875) 44 LJCP 191
*Tan Boon Kean v PP* [1995] 3 MLJ 514

**Legislation referred to**

Civil Law Act 1956 ss 7(2), (3)(iv)(d), (3A), 28A(2)(d)(i)

**Appeal from**: Summons No 58–89–1992 (Sessions Court, Butterworth)

*DP Rajah (Charles Rajah & Co)* for the appellant.
*R Rajendran (VP Nathan & Co)* for the respondents.

**Jeffrey Tan JC**: This was an appeal by the appellant against the decision of the Butterworth Sessions Court given on 30 September 1993, in a running down action, in which the appellant had lost his 21-year-old son ('the deceased') upon whom he was dependent for support, in a road accident, his claim being a dependency claim under s 7(3) of the Civil Law Act 1956 ('the Act').

At the conclusion of the trial, the court held the respondents 100% liable for the motor accident, awarded the appellant the sum of RM1,300 (towards funeral expenses) and the costs of the action, but dismissed the appellant's 'dependency claim'. The trial court, however, provisionally assessed the years' purchase as eight years at RM250 per month. The appeal was against the dismissal of the dependency claim.

When the appeal was heard, counsel for the respondents did not disagree with the trial court's provisional assessment, but he said there was no evidence of the appellant's dependency for the grant of the provisional award.

That the appellant, the father of the deceased, was a person qualified to benefit in an action under s 7(2) of the Act was obviously undeniable. To succeed on his claim for the loss of support, it was however incumbent upon the appellant to prove the financial loss he sustains as a dependant and not in any other way (see *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 at p 240). Indeed, it was precisely for that reason that the Supreme Court (in *Chan Chin Ming*) reduced by half the sum of RM750 found by the High Court as the 'monthly loss of support', as the plaintiff who claimed her deceased son gave her RM750 a month admitted in her evidence that she spent half of the RM750 on herself and the other

A half on the deceased's siblings who were persons not qualified to benefit from the action. On the multiplier of 16 years in s 7(3)(iv)(d), the Supreme Court (Edgar Joseph Jr SCJ dissenting) furthermore held that a court can take into account contingencies, such as the marriage of an unmarried child, and taxed down the number of years' purchase, imparting thus a statement of law stare decisis on this court that the multiplier of 16 years B (in s 7(3)(iv)(d)) was not strict nor rigid.

In the case of a claim for damages for personal injuries where the person injured was of the age 30 and below, s 28A(2)(d)(i) of the Act provides an identical multiplier of 16 years, but that multiplier was construed, quite differently, by the Supreme Court in *Marappan & Anor* C *v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99, per Gunn Chit Tuan SCJ (as he then was) as follows:

> ... 'in assessing damages for loss of future earnings the court shall take into account that in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase *shall* D be 16'.

The above Supreme Court decisions supposedly indicated, but certainly not so, that (i) the apex court of the land was not consistent on the same multiplier, and (ii) *Marappan*, although momentarily lacking the kudos of *Chan Chin Ming*, was the alternate definitive ruling nonetheless equally E binding on the trial court and this court.

In *Chan Chin Ming*, it was a claim for damages for loss of support by a dependant, while in *Marappan* the claim was for damages concerning personal injuries suffered by the injured party. In the case of a dependant, the support from the deceased, in the learned words of Peh Swee Chin SCJ at p 243, 'would either cease or be reduced considerably on the almost F invariable contingency of subsequent marriage of such unmarried child', an observation truely reflective of reality as the taking on by marriage of an additional dependant would usually burden further the same resources, thus affecting the ability to maintain a prior level of support. However, in a personal injuries claim, damages for the loss of future earnings is awarded G to an injured party for the loss of his income or earning capacity as a result of the injury suffered, a loss that is not affected by the contingencies affecting the ability to maintain the degree of support to a dependant.

The Supreme Court decisions were, therefore, entirely complementary; in *Chan Chin Ming* it was a claim *by a dependant for loss of support* where the H number of years' purchase was taxed down, while in *Marappan* it was a claim by *the injured party* (for himself) *for loss of income* where the number of years' purchase, per Gunn Chit Tuan SCJ (as he then was) at p 101, 'shall be 16'.

Reasons were given by the learned trial judge on why he rejected the I appellant's claim of dependency. In particular, the learned trial judge quoted the following evidence given by the appellant:

> Duit RM700 ini (yang diberi oleh si mati) untuk belanja kedua-dua keluarga iaitu makan, minum serta sekolah anak-anak. Saya juga sendiri bekerja dan dapat pendapatan RM500. Ya, saya tidak bergantung pada pendapatan si

mati. Ya, saya menuntut RM700 ini untuk keluarga saya dan anak-anak saya ... A

and held that the 'kehilangan wang yang diberi oleh si mati kepada plaintif tidak termasuk dalam tuntutan kehilangan yang boleh dituntut di bawah s 7'

However, the above quoted evidence was but a part of the appellant's entire testimony which was otherwise a story of his reliance and dependence on the RM700 from the deceased, seen so from the following excerpts: B

> Anak si mati ini berulang alik kerja tiap-tiap hari ... Tiap-tiap hari dia balik ke rumah antara 6–7 ptg ... Boleh kata tiap-tiap hari dia ada di rumah, kecuali bila dia kerja malam. Dalam seminggu, 5 malam dia kerja malam ... C saya tidak tahu berapa pendapatan dia dari usaha ini ... yang dia beri RM700 tiap-tiap bulan itu adalah untuk membantu keluarga. Setiap keluarga belanja RM500. Dia beri duit RM700 pada diri saya sendiri. Duit RM700 ini untuk belanja kedua-dua keluarga iaitu makan, minum serta sekolah anak-anak. Saya juga sendiri bekerja dan dapat pendapatan RM500. Ya, saya tidak bergantung pada pendapatan si mati. Ya, saya menuntut RM700 D ini untuk keluarga saya dan anak-anak saya ... saya tak setuju saya sendiri kena menanggung kedua-dua keluarga dan tidak bergantung pada anak ... Ya, gaji saya RM500 semasa anak saya meninggal dunia. Duit ini tidak cukup untuk tanggungjawab saya pada keluarga. Kalau si mati tidak beri saya RM700 saya tidak dapat bertanggungjawab pada keluaga saya ... *Bayaran RM700 itu memang mustahak bagi diri saya* ... Ya, 12 orang ini saya E yang bertanggungjawab. (Emphasis added.)

The trial court did not exactly say so, but its grounds expressed its finding that the appellant was not a dependant nor depended on the deceased, and being so the appellant had failed to prove the 'loss of support'.

The word 'dependant' is alien to s 7 of the Act, but who is a F 'dependant' (see s 8(5)) is clearly identified in s 7(2):

> Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

The persons qualified under s 7(2) claim for compensation for the 'loss of G support' they suffer as a result of the death of the provider of the support. Where death did not result from a wrongful act, they have no beneficial claim; it is the injured party who has the right to claim for damages for the injuries he suffered and for any loss of earnings under s 28A.

In the context of s 7, 'support' means the pecuniary provision which H furnishes a livelihood, a source of means of living, subsistence, sustenance, maintenance or living, and the 'loss of support' means the pecuniary benefit lost, a consequence of the death of the provider. This was said plainly by Peh Swee Chin SCJ in *Chan Chin Ming* at p 240 thus:

> loss of support is for all practical purposes translated into financial loss I sustained by a dependant ...

after his Lordship at p 240 had explained that '... the introduction of the words "loss of support" has not added anything new to the state of the law,

but only incorporated what the courts had always decided before such addition that such damages were in fact loss of support'.

That the state of law before the amendment of 1 October 1984 was entirely financial, is best exemplified in *Low Kim Yan v Tay Guat Hian & Ors* [1960] MLJ 261, where Thompson CJ said, 'the husband was maintaining the wife and children, and as a result of his death they have lost that maintenance', and the truism in the comment by Lord Wright in the House of Lords in *Davies v Powell Duffryn Associated Collieries Ltd (No 2)* [1942] AC 601 at p 617, that 'there is no question here of what may be called sentimental damages, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence ...'.

Thus, a claim by the persons qualified under s 7(2) for 'loss of support' is nothing more than a claim for financial loss; exemplary damages cannot be obtained in a claim made for and on behalf of the dependents of a deceased (see *Mariayee & Anor v Mohamed Nasir & Anor* [1985] 1 MLJ 427). Section 7(3A) introduces, however, a new head of non-pecuniary damages called bereavement, presently set at RM10,000, to the spouse of the deceased or the parents of the deceased who was a minor and never married.

Since it was all a matter of a financial loss, it was asked if it was necessary that the financial support lost was depended on by the appellant for his everyday subsistence as to fall within the ambit of 'loss of support'. Would a person blessed with an independent income and depended not on the money given by the deceased, but otherwise qualified, be any less a 'dependant' under s 7?

In *Chan Chin Ming*, the Supreme Court concluded 'that a plaintiff can only claim in such a case for financial loss which he sustains as a dependant and not in any other way'. Lamenting the paucity of supporting authorities, the Supreme Court reviewed the decisions in *Burgess v Florence Nightingale Hospital for Gentlewomen* [1955] 1 QB 349; [1955] 1 All ER 511; [1955] 2 WLR 533 (where the husband and wife were both professional dancing partners and the wife died due to the negligence of a surgeon; the court held that the basis for damages was that the benefit must be a benefit arising from the relationship as husband and wife, and allowed a modest sum for the deceased's wife's contribution to the joint living expenses but the claim for loss of services of his wife as a dancing partner was refused), and *Sykes v North-Eastern Railway* (1875) 44 LJCP 191 (where the deceased son was prior to his death working for his father who fully paid the deceased; the court held when claiming for loss of support, that the father though normally entitled to claim such loss of support, could not claim it as what the father lost was the benefit of fully paid services in his capacity as employer and not as dependant to his son) and expressed its regret on the failure at the trial to cite those authorities to the learned trial judge. In his dissenting judgment, Edgar Joseph Jr SCJ at p 247 enunciated it no differently:

> In my view, the plain, ordinary and grammatical meaning of the expression 'any loss of support suffered' appearing in s 7(3), must refer to the loss of

support suffered by 'the party for whom and for whose benefit the action is brought'. In other words, the loss suffered must be personal to the class of dependants specified in s 7(2) so that a loss suffered by any other person not falling within that class must be excluded.

Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 per month only. For the court to increase the value of the loss of support to RM750 per month, by adding the sum that was spent by the mother on the three school-going children, would amount to departing from the plain, ordinary and grammatical meaning of the statutory language of s 7(2).

The claimant must, therefore, be the direct beneficiary of the financial support, and contrary to the impression conveyed by the headnote in the report on *Chan Chin Ming*, the Supreme Court did not sustain the conclusion of the trial judge solely because half of the RM750 per month was for the benefit of the deceased's three siblings and not the claimant, and not (the impression conveyed) because support is restricted to food and sustenance. The test is the direct benefit to the claimant, not vicarious, but the claimant need not prove he was dependent (contrary to proof that he was a qualified person) on the financial support. Nevertheless, the proof of indigent circumstances, and therefore a greater likelihood of dependence on the deceased, will give much truth to a claim of the support that was lost.

Apart from the enunciation by both learned Supreme Court Justices in *Chan Chin Ming*, the latest on the interpretation of statutes came from Mohd Azmi SCJ in *Tan Boon Kean v PP* [1995] 3 MLJ 514 at p 525:

On the interpretation of statutes, the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed (see *Magor & St Mellons RDC v Newport Corp* [1952] AC 189 at p 191; [1951] 2 All ER 839 at p 842). The court has no power to change any words used by the legislature. Further, where the words are simple and clear, it is the duty of the court of law to give these words their natural meaning even though such interpretation leads to apparent anomalies.

Therefore, a requirement that a claimant must be dependent on the support from a deceased will not be giving the natural meaning to plain and ordinary words in s 7(3). The anomaly in the instant case was, however, obvious; given the money for his personal benefit, the appellant was free to spend it, prudently or licentiously, as he so wished, but given to him for the benefit of unqualified persons, it was not support within the meaning of s 7(3).

That being so, the finding by the learned trial judge that the 'loss of support' was not proved as the appellant was not dependent on the deceased could not be supported. The appellant as the head of his two families must naturally agree he was ultimately responsible for the maintenance of his two families. The appellant said the deceased gave him RM700 per month towards the deceased's immediate family's expenses, but the appellant's direct benefit from the RM700 per month, and the

A appellant as a member of that family must have derived some, was never considered.

The amount of actual support received, the direct benefit to a 'dependant', and the amount of damages are of course matters pre-eminently for a trial court to decide, and per Thompson CJ in *Nam Thiam Siew v Chuang Wai Lan* [1959] MLJ 126 'a matter of assessment and not a matter of pure calculation'. The trial court provisionally assessed the years' purchase as eight at RM250 per month. Considering the deceased was 21 years old and single, and was drawing a salary of at least RM565 per month, the court found the trial court's provisional assessment of RM250 per month on a multiplier of eight years as the loss of support was reasonable, any difference between the trial court's provisional assessment and this court's assessment was also negligible and did not warrant any interference.

The appeal was allowed, the respondents were ordered to pay to the appellant the sum of RM24,000 (RM250 x 96) as the future loss of support.

*Appeal allowed.*

Reported by Chin En Tek